

REMARKS AND SUMMARY OF TELEPHONE INTERVIEW

The Examiner's thoughtful attention to the present application is greatly appreciated.

In the Office Action of September 3, 2003, the Examiner rejected Claims 1 - 41 under 35 U.S.C. §103. Applicant has now amended Claims 37 and 39, and cancelled Claims 38, 40 and 41. Entry of the amendments is respectfully requested. No new matter is added. Instead, the amendments have been made so that each and every one of the claims include the limitation that the network system for facilitating the negotiation and purchase of goods or services of Applicant's invention includes a real-time data connection between buyers and sellers, a feature nowhere disclosed or suggested in the prior art.

In a telephone interview of November 13, 2003, Applicant contended that the prior art (*Walker et al.*, *Berstis* and *DeSimone*) does not disclose Applicant's claimed feature of a real-time two-way data connection between buyers and sellers. In response, the Examiner suggested that Applicant review the additional references *Conklin et al.* (U.S. Patent No. 6,332,135) and *Shkedy* (U.S. Patent No. 6,260,024), indicating that these references may disclose this feature.

In response, Applicant submits that none of the prior art references, including *Shkedy* and *Conklin et al.*, disclose or suggest, alone or in combination, a network system facilitating the negotiation and purchase of goods or services for buyers and sellers

including a real-time two-way data connection between buyers and sellers. Moreover, the prior art does not disclose or suggest, alone or in combination, a network system including both “primary” and “virtual” sellers. This limitation is found in Claims 11 - 20 and 21 - 36 and is believed to provide still an additional basis for patentability.

REJECTION UNDER 35 U.S.C. §103

In the Office Action of September 3, 2003, the Examiner rejected Claims 1 - 41 under 35 U.S.C. §103(a) as being unpatentable over *Walker et al.* (U.S. Publication No. 2002/0178069) in view of *Berstis* (U.S. Patent No. 6,570,870). The Examiner further cited *DeSimone* (U.S. Patent No. 6,175,619) as relevant to the §103 rejection.

In rejecting the claims, the Examiner contended that *Walker* teaches a method for negotiating between a buyer and seller in real-time over the Internet and that *Walker* provides the means for consummating the sale. However, the Examiner asserts that *Walker* does not specifically mention the buyer and seller having a separate voice channel which is disclosed in *DeSimone*.

Conspicuously, the Examiner does not explain where *Walker*, *Berstis*, or *DeSimone* disclose or suggest a real-time two-way connection between a buyer and seller, or where *Walker*, *Berstis*, or *DeSimone* disclose a real-time two-way *data* connection between a buyer and seller. Also conspicuously missing, the Examiner does not assert that the prior art discloses or suggests a network system including both *primary* sellers and *virtual* sellers.

Applicant's Claimed Invention

Applicant's claimed invention is directed to a computer network including a host processor which connects buyers and sellers through remote computer terminals. Somewhat

like the autobytel system previously cited by the Examiner (U.S. Patent No. 6,282,517) and the priceline.com system (*Walker et al.*), the inventory of a respective seller's is recorded in each seller's computer and transmitted continuously or periodically to the host processor system to create a database of inventory of goods or services offered by sellers connected to the network. Also similar to the autobytel and priceline.com systems, a buyer connected to the network transmits transaction related information such as an identification of goods sought to enable the host processor to automatically match potential buyers with potential sellers.

However, unlike the autobytel and priceline.com systems, Applicant's claimed invention does not simply forward purchase requests from the buyer and seller, such as by e-mail or the like. Instead, Applicant's claimed invention provides a two-way "real-time" data connection between the buyer and the seller. As reflected in each and every one of the claims of the present application, Applicant's network includes a "real-time two-way data connection between the buyer and the seller". As reflected in Claims 1 - 10 and 21 - 27, Applicant's invention preferably includes two "real-time" two-way communication connections. A first data connection is provided for providing real-time two-way communication between the buyer and seller for enabling the buyer and seller to communicate by immediate written messaging. This immediate written messaging enables the buyer and seller to alter the parameters of the sale in real-time while the buyer and seller

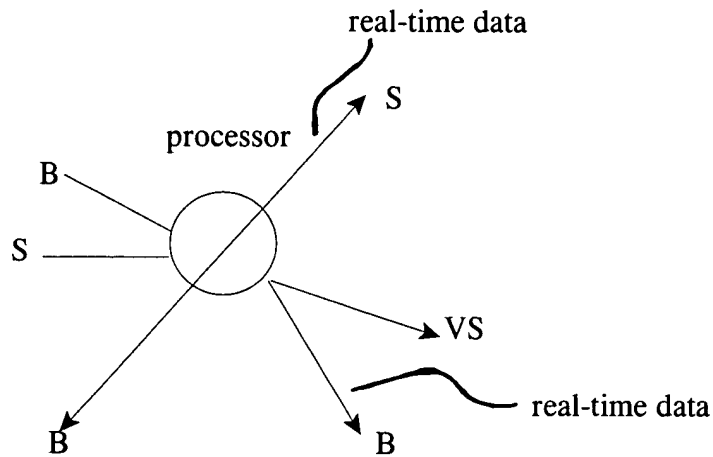
are simultaneously at their computers to alter the negotiated parameters for a sale.¹

Moreover, the claims include the limitation that the network includes a real-time two-way speech communication for enabling buyers and sellers to speak with one another in real-time to negotiate and complete the sale of goods or services.

With reference to Claims 11 and 28 and their dependent claims, Applicant's invention includes still an additional limitation not taught or suggested in the prior art. Specifically, these claims include the limitation that the network system includes both "primary" sellers and "virtual" sellers of goods and services. By previous amendments to the claims, the language has been clarified to reflect the virtual sellers are distinct from the primary sellers to provide for the sale of the goods of another. Simply, the prior art does not suggest any type of network system wherein sellers can selectively choose to sell their own goods, or select that the virtual seller sells their goods for them.

Applicant's invention including a real-time two-way data connection as well as virtual sellers is graphically represented as follows.

¹ Applicant believes that the traditional meanings or definitions for "real-time" are acceptable, for example, real-time has been defined to mean "characteristic of transaction processing systems, aircraft guidance systems, scientific applications, and other areas in which a computer must respond to situations as they occur." *Microsoft Computer Dictionary*, 5th Ed. Moreover, Applicant agrees to concede that for the present purposes, real-time also means that the buyer and seller are communicating substantially simultaneously, such as where a buyer and seller are at their computers at the same time. This definition is believed to effectively exclude non real-time communications such as e-mail.



B= buyer

S= seller

VS= virtual seller

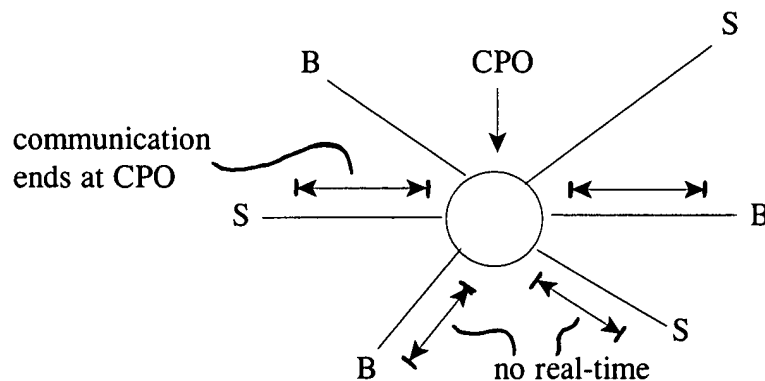
Walker et al.

Walker et al. discloses a quality control conditional purchase offer (CPO) management system which is connected to both buyers and sellers. However, the CPO does not directly connect the buyer to the seller. In fact, *Walker* does not disclose that the buyer and seller have any direct communication with one another, let alone real-time communications as claimed by Applicant.

Instead, *Walker et al.* discloses a system wherein buyers transmit an offer to the CPO. The CPO then can reject the offer, encourage the buyer to modify the offer, or subsidize the offer. (See Abstract, paragraphs 9, 30, 31 and 36). However, these decisions are not made by the buyer. Meanwhile, *Walker* discloses that if the offer is “statistically likely to be accepted, the offer may be forwarded to the seller for consideration.” (See paragraph 31). Again, however, there is no suggestion that the buyer communicates directly with the seller.

Meanwhile, *Walker* describes various communication techniques between the buyer and the CPO, and the seller and the CPO, but not the buyer and the seller. For example, paragraph 33 describes communications between the buyer and the CPO being by means of “telephone, facsimile, online access (the Internet), electronic mail, in-person contact or through an agent”. However, though online access is described in Applicant’s application as being a real-time two-way data connection, there is no suggestion in *Walker* to provide a real-time two-way data connection. Certainly, the alternatives of telephone, facsimile, e-mail and in-person contact do not suggest a real-time two-way data connection over a network system. Meanwhile, paragraph 24 describes the communication between the seller and CPO as being “directly or by . . . electronic posting”. Again, this does not provide any suggestion for a real-time two-way data connection.

Since *Walker* does not disclose any type of direct communication between a buyer and seller, or a real-time two-way data connection, *Walker* can be best graphically depicted as follows.



Berstis

Berstis (U.S. Patent No. 6,570,870) discloses real-time voice communication over the Internet. However, it does not disclose or suggest a network system for facilitating the purchase of goods or services over the Internet. Moreover, this reference does not suggest a real-time two-way data connection between a buyer and a seller.

DeSimone

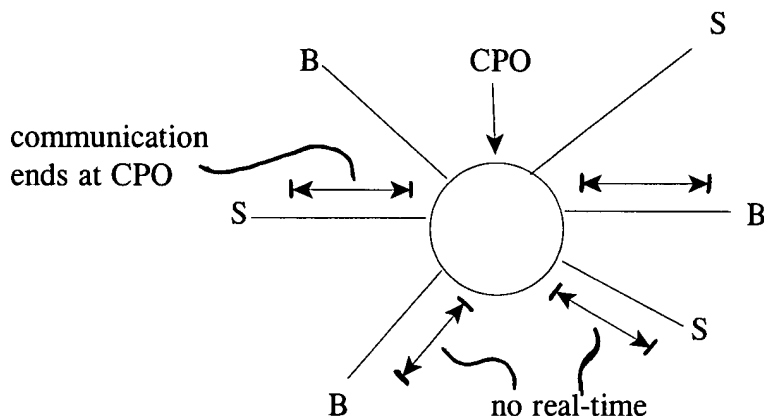
DeSimone (U.S. Patent No. 6,175,619) like *Berstis*, discloses telephone calls over the Internet. Moreover, this reference refers to chat rooms including “instant messaging”. However, there is no suggestion within this reference for an online negotiating system or real-time data communications between buyers and sellers.

Shkedy

Shkedy (U.S. Patent No. 6,260,024) describes a system substantially similar to *Walker et al.* More particularly, this reference discloses a networking system which is connected to both buyers and sellers. However, *Shkedy* discloses a system which is directed to “pooled” purchase orders in which a plurality of buyers can “pool” their buying needs to obtain a lower price from respective sellers. By the very nature of a pooled system, the buyers and sellers do not communicate directly. Instead, the network combines their desires to create an offer for them. Moreover, as explained in column 5, a buyer may make an offer but the “pool” date may be many days later. For example, column 5, lines 34 - 36 states, “the buyer would also specify that he wants to participate in the Friday, November

6, 1998 at 12:00 p.m. EST pool. . .”. Obviously, these intermittent communications over many days or weeks could not be considered “real-time”.

Like *Walker et al.*, *Shkedy* is best graphically depicted as follows.



Conklin et al.

Conklin et al. (U.S. Patent No. 6,332,135) also discloses a network negotiating system for allowing parties to negotiate over the Internet. The system allows buyers to search and evaluate seller information, propose and negotiate orders and make counteroffers. Moreover, the website repeatedly refers to the invention as being an iterative bargaining and purchasing system in which each stage of the negotiation is tracked and recorded to promote non-repudiation of negotiated terms. However, there is no suggestion that there be communications directly between the buyer and seller or that the system include real-time two-way data connections. Instead, all negotiations and communications over the Internet are conducted by slow, non real-time, communications such as e-mail.

For example, Fig. 11b reflects that communication between the negotiator and the network be by e-mail. Figs. 18 - 23 provide examples of the e-mail negotiations that take place and which are recorded by the network system. Column 19, lines 27 - 30 refer to the seller following the negotiations by e-mail or browser or similar means, and request data downloads or activity reports on transaction data.” Certainly, if the seller was engaged in a real-time two-way data connection with the buyer, the seller would not need to follow the activity by e-mail or browser or similar means. Column 19, lines 40 and 41 refer to the system permitting the collection and analysis of e-mail demographic information as a result of the communications between parties. Column 20, lines 23 - 25, refers to the system providing buyers with the ability to make e-mail inquiries through the system.

Column 25 appears to be the best description of the negotiating process. “One of the entities initiates a negotiation process and the participants negotiate terms iteratively, back and forth through multi-variate negotiations engine 212 until the deciding entity accepts and closure 240 is reached.” (Column 25, lines 1 - 5). “Once the buyer has sent its proposal, the seller is alerted by the system by e-mail (as seen in Fig. 20) that a proposal is available on the system for review and negotiation. In one embodiment, the e-mail notification includes links to multi-variate negotiations engine system 02's site. Once the seller (using its browser) becomes aware from the e-mail that a proposal is available it jumps immediately, using the link mentioned above in the e-mail, to view a browser screen such as that shown in Fig. 16, which shows a proposed order with payment by letter of credit from the above buyer.” (Column 25, lines 48 - 56). “In this approach, the e-mail

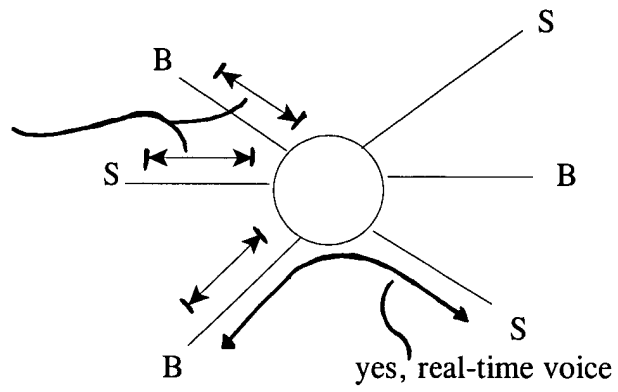
notification does not contain any sensitive or confidential data.” (Column 25, lines 60 and 61).

“All participants in a negotiation are continually notified by e-mail as the negotiations progress.” (Column 25, lines 66 and 67).

Conklin et al. does disclose that the parties may communicate in real-time by video conferencing. In particular, column 18 and Fig. 1h describes the system as optionally including video conferencing between the parties. Moreover, column 8, lines 10 - 29, indicate that the respective negotiators may look at the same webpage displaying the list of terms to be negotiated. However, *Conklin et al.* does not suggest that the parties are capable of actually altering the terms in real-time online. Instead, their view of the terms is more akin to simply looking at the same webpage at the same time, as there is no suggestion that the parties can transmit data to one another. Instead, the real-time communications are limited to voice over the video conferencing system.

Thus, *Conklin et al.* is substantially similar to *Walker et al.* and *Shkedy* in that communications over the Internet are not in real-time and not between the buyer and seller, but instead directly between the negotiators and the network. However, *Conklin et al.* does disclose the additional feature of real-time video conferencing. Thus, *Conklin et al.* can be graphically depicted as follows.

No real-time data.
No direct data
connector between
buyer and seller.



PATENTABILITY

For a claimed invention to be barred as anticipated under 35 U.S.C. §102, there must be “substantial identity” between the invention sought to be patented and the prior art. A single printed publication must be so substantially the same as the invention as to accomplish the disclosure purpose of the patent law. Anticipation must encompass the invention that is claimed. It is not enough that an invention be suggested by the literature, nor that the literature made the invention inevitable.

Meanwhile, to reject a claim as obvious under 35 U.S.C. §103 requires that the invention was “obvious” in light of the disclosures in various publications publically available and related to the field of the invention. The test is to compare the new invention with those disclosed in the prior patents and other publications to determine whether one skilled in the art could have produced the invention in question using mere mechanical engineering skills, as opposed to inventive skill. Moreover, obviousness must be supported by some suggestion in the references that they be combined and cannot be concluded on the basis of hindsight. The initial burden is on the Examiner to provide the suggestion or desirability of doing what the inventor has done.

Perhaps the clearest case of *non-obviousness* is found where the prior art, alone or in combination, does not disclose a claimed limitation, because all of the claim limitations must be taught or suggested by the prior art. *In re Wright*, 848 F.2d 1216 (Fed. Cir. 1988).

As explained below, the prior art references, alone or in combination, do not disclose features of Applicant's claimed invention.

The Prior Art, Alone or in Combination, Does Not Disclose Two Limitations Found in the Claims

Every one of the claims include the limitation that the host processor provides a real-time two-way data communication connection between the buyer and seller. This feature is absolutely not suggested in any of the above-identified references.

In addition, Claims 11 and 28, and their dependent claims, include the limitation that Applicant's invention includes both "primary" sellers and "virtual" sellers of goods or services. As claimed, the virtual sellers include a database of the goods or services of a primary seller. The virtual sellers are not merely ordinary sellers of their own goods or services, but instead the virtual sellers provide a separate platform for selling the goods or services of the primary seller when the primary seller is incapable of completing a sales transaction, such as when the primary seller's employees have gone home for the day. These virtual sellers still communicate through a real-time two-way data connection with the buyers, but take the place of the primary seller under predetermined conditions. Again, this combination of primary sellers and virtual sellers is not disclosed in the prior art, nor has the Examiner contended that virtual sellers are described in the prior art. Thus, Claims 11 and 28, and their dependent claims, include additional basis for patentability.

CONCLUSION

It must be reemphasized that Applicant's invention is not the same, or even substantially similar, to the traditional online negotiating systems provided by autobytel, priceline.com, carsdirect.com, ebay.com, etc. etc. These dealer websites lack the sophistication and do not enable consumers to negotiate in real-time, in which offers and counteroffers are transmitted back and forth in real-time. By offering this feature, Applicant's invention provides a significant improvement over the prior art. This advantage is of particular importance where consumers are buying extremely expensive or complicated goods such as automobiles where consumers desire to negotiate many different parameters in addition to price, such as rebates, interest rates, product features, shipping costs, delivery requirements, etc. Applicant has discovered that the real-time data connection provides consumers with an increased comfort level that their needs and wants are being met in an immediate manner, as opposed to the slow e-mail type communications offered by the prior art systems.

The claims are believed to be in condition for allowance and notice thereof is respectfully solicited. If there are any remaining issues that need to be resolved, it is respectfully requested that a telephone call be placed to the undersigned.

Respectfully submitted,

DRUMMOND & DUCKWORTH

A handwritten signature in cursive script, appearing to read "David G. Duckworth", with a long horizontal flourish extending to the right.

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